THE PUBLIC PROSECUTOR: HIS POWERS, TEMPTATIONS AND LIMITATIONS

By Howard S. Gans,
Of the New York Bar. Formerly an Assistant District Attorney of New York County.

The prosecuting office is one of wide-reaching influence. It is the focal point of the administration of the criminal law. All prosecutions of major importance pass through it and are conducted by it, and upon the skill with which it conducts them depends in large measure the effectiveness of the administration of the criminal law. But efficiency in the conduct of criminal cases represents the least of its potentialities. The radius of its influence extends to every activity of municipal government. Wilful neglect of duty on the part of any public officer is a crime. Every public officer and every public office performing functions within the territorial limits over which the prosecutor's jurisdiction extends, is at all times subject to investigation by the grand jury; and, while theoretically the prosecuting officer is but the agent and official adviser of the grand jury, in practice the grand jury acts upon his initiative and does his bidding. Hence it lies within his powers, if not to ensure good government, at least to stimulate efficiency in almost every branch of the public service. The fate of political parties, the choice of candidates, the issue of elections, often depend upon his almost unhampered discretion. An investigation shrewdly instituted and effectively protracted, may create an impression of inefficiency or of corruption sufficient to discredit an administration or a candidate for office, however honest or efficient. A failure to investigate often permits the continuance of an inefficient or corrupt administration. Upon the vigor and impartiality of his activities with regard to offenses against the election laws, the result of an election is often dependent.

For the manner of the exercise of his powers, the prosecuting officer is singularly free from accountability. Rarely is there pre-

sented to him a situation in which any particular course of action is made imperative; in which it can be established that, through any particular course of action, he has failed in the performance of his duty. He is bound by law to do nothing save to conduct the cases that are brought to his attention, to advise the grand jury as to the law, and to produce for their examination such witnesses as they may desire to hear. Though corruption be rife, vice flaunting, and crime flagrant and undetected, the prosecuting officer may find justification for quiescence in the claim that the duty of detecting and repressing crime is not his, that he has subject to him neither a constabulary nor a detective force with which to enforce the laws, that he is but a law officer retained by the commonwealth to present in court such criminal cases as are brought to his office, and that he has no duty to perform until legal proof of criminality shall have been presented to him. On the other hand, there is practically no limit to the initiative he may display if he be moved to make his powers rather than his duties the measure of his activity. The public purse is practically at his command; private detectives, accountants, experts of all descriptions are at his service; the books and papers of every municipal department are open to his inspection, and every official subject to his interrogatories. He exercises the broadest discretion in determining whether, when, and how he shall act. No criminality is so clear that he cannot grant immunity from conviction if he be so minded. On the other hand, no complaint can be so flimsy as to make it impossible for him to give it currency and lend it plausibility by an investigation. And though his activities result in oppression, or his passivity enable corruption to flourish, it is rarely possible to establish that he has exceeded the bounds of his discretion or failed to measure up to the obligations of his office.

A governor who would remove a prosecuting officer for misconduct must act arbitrarily or upon the basis of suspicions, unless the prosecutor shall have been extraordinarily stupid as well as extraordinarily corrupt.

Moreover, less than most public officers, is his conduct subject to be influenced by enlightened public criticism. His is peculiarly an office as to which the public judgment is likely to be led astray, for the public has no adequate means of judging either of the honesty or of the efficiency of its prosecutor. In almost every instance the essentials to an intelligent judgment of his conduct, are a minute

knowledge of the facts and a thorough familiarity with the law; and the public, of necessity, bases its judgment upon a partial disclosure of the facts and an almost total ignorance of the law. It is prone to mistake rumor for proof, to confuse moral obliquity with criminality, and to imagine that a conviction for larceny should follow whenever its favorite newspaper prints the word "steal" in its headlines. It thirsts for sensations, and is fain to drink the blood of sacrificial offerings with its morning coffee. Its newspapers thrive by feeding to it the pabulum it craves, and the prosecutor who furnishes the sensations wins both the newspapers and the public. A refusal to yield to public clamor, often the highest proof of the highest integrity, is not infrequently construed to be evidence of dishonesty; and the yielding to clamor, often the highest proof of weakness and dishonesty, generally creates a reputation for unimpeachable integrity.

Moreover, the public judges, of necessity, by results or by so much of them as it can understand. To it the conviction of a person accused is an evidence of integrity and efficiency; a failure to convict is a miscarriage of justice, for which it holds or fails to hold the prosecutor responsible according to the degree of favor he has found in its eyes. It can know nothing of methods or their propriety. Whatever conduces to a conviction is likely to seem right in its eyes. The reversal of the conviction by an appellate court, for improprieties however grave, it is apt to attribute to the mysterious technicalities of the law and to urge as an argument for the recall of the judiciary. It can rarely be made to realize that the prosecutor's duty is not to win cases, but to further the ends of justice under the law; that he violates his duty and is false to his oath quite as flagrantly when he prosecutes a person whom he believes to be innocent of crime, even though that person be censurable in the forum of morals, as when he fails to prosecute a person whom he believes to be guilty and against whom he has sufficient evidence; that a successful prosecution may be a disgraceful prosecution.

In this there lies public danger; for from this it results that in few places is the road to popularity so easy, and that in few places is it so often at variance with the honest performance of public duty. The assurance of promotion, and the music of popular applause wait to enchant the ears of him who will but sound the keynote to which the public is ever ready to attune its chants, by attacks upon those whom it lusts to destroy; and the applause may be swelled

to deafening volume if by judicious subservience the prosecutor can conjure the newspapers to become the conductors of the choir; while political oblivion and unmeasured condemnation are but too apt to be the lot of the prosecutor of unyielding integrity, who holds it his duty to see that justice is meted out evenly to the popular and the unpopular alike. To the self-seeker, it is an office overflowing with opportunities for aggrandizement; to the honest man it is a thorny path of public usefulness, which he must walk well armed against the lure of applause and strong to endure misconstruction and abuse.

It is an office of exasperating limitations. For the detective services which are essential to his effectiveness, the prosecutor must rely, in the main, upon the police department,—which is itself only too often so corrupt and inefficient as to become an obstacle and an object of attack, rather than an ally in his campaign against crime. His most earnest efforts are subject at any time to be nullified by the stupidity or corruption of a single judicial officer. On every side he meets with senseless barriers to the effective performance of his functions, in the obsolete provisions of statutes and constitutions which convert the courts of law into an arena for the display of mental gymnastics and deny to them the realization of their true dignity as laboratories for the discovery of the truth.

Of the existence of these provisions, the layman as a rule is but vaguely cognizant; of their effect he is, as a rule, totally ignorant. To a just appreciation of the potentialities of the prosecuting office, a knowledge of these rules and a realization of their implications, are essential. Only through this knowledge and appreciation can the prevalence and comparative impunity of crime be reconciled with the apparent breadth of the prosecuting officer's powers. To a presentation of these limitations and of their results, the remainder of this paper has been devoted. The presentation has been cast into the form of concrete illustrations, because it has been thought that only through illustration, if at all, could so technical a topic be vivified.

Briefly summarized, the evils sought to be pointed out are those arising from the denial to the prosecutor of the right to appeal from the rulings of a trial judge made in the course of a criminal trial; those arising from the absurd extensions or illogical construction of the constitutional provision against self-incrimination; those arising from the illogical requirements of corroboration, in certain classes of

cases; and those arising from the constitutional restraints which make it impossible for a prosecutor to secure the evidence of witnesses who reside or betake themselves beyond the borders of the state in which the crime is prosecuted. The illustrations are pieced together from actual happenings; typical of what constantly occurs in a prosecutor's experience.

I

The legislative investigating committee had crowned its labors by tracing the bribe that had prevented legislation at the previous session to Van Burner, the president of the construction company. To fix the responsibility had been no very difficult matter, after they had induced Jefferson, the legislative agent of the company, to tell the truth. For Van Burner had grown so accustomed to bribery that he had treated the matter as an ordinary business transaction. He had given Jefferson the ten thousand dollar check wherewith to acquire funds for that purpose in the presence of the first vice-president, the treasurer and the auditor of the company, whose signatures and counter-signatures to the check were necessary, since he did not sign it himself. Indeed he had discussed the whole campaign of bribery with Jefferson, in their presence, while the treasurer was writing the check. The first vice-president, the treasurer and the auditor had all corroborated Jefferson in the testimony given before the committee. The transaction had revolted them, each had refused at first to sign the check or to have anything to do with the matter. But Van Burner, as everybody knew, was a masterful person to whom all the other officials in the company, whatever their titles, were little better than clerks, and he had laughed down their scruples, had borne down their opposition, and they had done his bidding. Shortly thereafter they had held a conference and had determined to resign from the company in a body so that they might feel free to inform the authorities and had gone to Van Burner to tell him of their determination, Van Burner had looked them over coolly, had called their attention to the fact that it was their names and not his that appeared on the check, that there was nothing but their word to connect him with the transaction and had advised them quite dispassionately to keep their tongues under control. They were glad to seize this opportunity to unburden themselves of the weight that lay on their consciences. They would testify before the grand jury or anywhere else.

The chairman of the legislative committee had come to confer with the prosecuting officer to whom he had previously sent the stenographic minutes of the evidence. "Is that all the evidence you have?" the prosecuting officer had asked him. "All we have!" the chairman of the committee exclaimed, "isn't it enough? Three reputable witnesses in addition to Jefferson all telling the same story, none of them shaken in the least by cross-examination and all testifying in a way that carried conviction to everyone in the room? Why no jury could doubt the word of any one of them. If that isn't enough I'd like to know how you ever expect to convict anyone of anything!"

"If you were familiar with the criminal law of this state," the prosecutor replied, "you would know that it forbids a conviction on the testimony of an accomplice, unless he is corrobated by other evidence tending to connect the accused with the crime.[1] Every one of these men is an accomplice in that bribery. Jefferson did the work in the open and the other three helped to provide the money for the purpose." "Pshaw," said the chairman of the committee, "I've read the statute. It says 'an accomplice,' it means what it says, 'one' accomplice. It does not mean that you can't convict on the testimony of four witnesses who tell consistent corroborating stories, which the jury believes, just because each of the four has taken some minor part in the commission of the offense." "Doesn't it?" said the prosecutor, "Go read the decisions as well as the statute and you'll find your error. The case would be thrown out of court if I had a hundred such witnesses."

This illustration may serve to throw some light upon the comparative immunity of that goal of the prosecutor's ambition, "the man higher up."

II

A committee of Johnson's creditors had called upon the prosecuting officer of New York county to demand Johnson's immediate prosecution for the wholesale fraud he had perpetrated. Five months ago Johnson had sent them written statements in which he had asserted that he was worth five hundred thousand dollars over and above his liabilities. On the basis of this statement he had obtained from them or from those whom they represented many thousands of

[1] This is the law in New York and in at least twelve or thirteen other states.

dollars in money and merchandise. A week ago Johnson's place of business had been closed by the sheriff on an execution based upon a judgment for a few thousand dollars. The sheriff had found nothing to levy upon. All Johnson's money had been drawn out of the banks, and the creditors could find nothing. They had called on Johnson at his home, and had been told by his butler that he did not care to see them. It was a clear case, and they had come to the public prosecutor for redress. They realized that the crux of the case lay in proving that Johnson's statement was false, and they had procured their attorney to furnish a brief of the evidence whereby they expected to prove that fact. The brief set out the following items:—

First. Williams, Johnson's confidential cashier, had confessed to its falsity. He had prepared the statement under Johnson's orders, and mailed it to the creditors. He had kept the books of account, and knew that, though the statement asserted a surplus of half a million dollars, Johnson was, as a matter of fact, hopelessly insolvent. More specifically, Williams had pointed out the falsity of the following definite items in the statement: (*a*) Merchandise in various stores throughout the United States; this had been overstated by several hundred thousand dollars; (*b*) Cash on deposit with Blank Brothers in Jersey City, stated at $100,000, whereas it was in fact less than $1,000; (*c*) Accounts due to Johnson—$300,000, whereas, in fact, as the books disclosed, they amounted to less than $50,000.

Second. He, the attorney for the creditors, had taken the following steps to verify Williams' statements: He had called upon Mr. Jones, Johnson's attorney, and had demanded an inspection of the books. This had been refused. Blank Brothers, the bankers, were friendly to Johnson and had also refused information, but he had caused a commission to issue in a civil action which he had instituted and had examined the members of the firm who were cognizant of the facts, and they had testified that Johnson's deposit had been less than $1,000.

Third. He had sent around to the managers of Johnson's stores located in a half dozen different states; had got from them estimates of the value of the merchandise in their stores; had totaled the amount and had found that it aggregated several hundred thousand dollars less than Johnson had claimed.

Fourth. Williams had given him a list of the persons who had been indebted to Johnson; he had secured statements of their accounts

from them. It had taken some time because there were several hundred of them, and they were located in all the states in the Union. He had aggregated these amounts and they totaled less than $50,000, as compared with the $300,000 that Johnson had claimed.

The case was, therefore, clear in every particular. He ought to apprise the prosecutor, however, that Williams would prove an unwilling witness. He had been ready to do everything in his power to assist the creditors in a civil action, but he had asserted that under no conditions would he help prosecute his ex-employer to whom he was indebted for many kindnesses. But the prosecutor, could, of course, subpœna him before the grand jury, and compel him to testify whenever he wanted him. His address was —— Main Street, Hoboken, N. J., and he was now employed in that city.

To this communication the prosecutor replies:

MY DEAR SIR:

Upon the facts stated in your brief, I am, I fear, powerless. The criminality seems clear, but I cannot get the evidence before the grand jury or the courts. Williams is in Hoboken, I cannot compel him to come here under subpœna. I cannot take his testimony under commission for use before the grand jury, because such a process would be unconstitutional. Even if I should be able to catch him some time in New York and get him before the grand jury, I could not, as you suppose, compel him to testify. Upon his own statement that he sent out the false statement, knowing that it was false, it is clear that he is technically an accomplice in Johnson's crimes, and that therefore he can refuse to testify on the ground that his testimony would tend to incriminate him. His testimony is the crux of the case; without him I cannot prove that your list of Johnson's stores, or of the persons indebted to him, is complete; and therefore I have no means of proving that Johnson's statement as to the amount of the merchandise or the amounts due him is incorrect. You know, of course, I have no means of compelling the production of Johnson's books, or of securing an examination of them, since the courts have decided that to compel him to submit his books for examination would be compelling him to be a witness against himself. It sounds absurd; but it is the law. I can proceed only if you can persuade Williams to testify. Even then I shall have difficulty. You may tell him that I will undertake not to prosecute him for his complicity in the crimes, if he comes forward voluntarily and testifies to the truth. You are at liberty to suggest to him that his confession to you proves him to be an accomplice in the crime and that it would be well for him to come forward before he is indicted. You will understand, however, that I cannot make good on the "bluff" if it should fail. For, as you know, I cannot indict on a confession alone without proof from other sources that the crime has been committed; and the same difficulties that stand in the way of indicting Johnson will prevent an indictment of Williams.

A few days later the prosecutor receives word that Williams is obdurate, but that a clerk has been found who will furnish the necessary proof as to the number and location of Johnson's stores and as to the list of his debtors; but who knows nothing of the amounts of the merchandise in those stores or the sums due from the debtors.

Again the prosecutor writes to the attorney for the creditors:

> This represents progress, but our difficulties have just begun. If you could persuade Blank Brothers or one of their employees who knows the facts to testify to the condition of the bank account, that would answer the purpose. But I understand they have refused. Of course, their testimony in your civil case is of no use here. We shall, therefore, be unable to establish the falsity of this item. To make a case, you will have to get either all the debtors on the list to come on to New York to testify to the amounts of their respective indebtedness, or all the managers of the stores to come on here to testify to the value of the merchandise in the stores. I assume that the former will prove impossible since I will have to keep them here at least two weeks or require them to make two trips,—one to testify before the grand jury, a second to testify in court. To get all these managers will be expensive, but possibly you can arrange to do it. I am thoroughly at your service if you can.

A few weeks later the attorney writes: "I can secure the evidence you require from the branch managers. It will be expensive, as you say, but the creditors have decided that something must be done to stop these practices, and have determined to make an example of Johnson."

As a result the indictment is found, and Johnson is put on trial. Witnesses have been examined for a week, when suddenly it is discovered that one of the managers entered Johnson's employ two months after the statement had been made and is not competent to testify as to the merchandise on hand at that particular time. All the trouble and expense are likely to be in vain. The district attorney is on the point of abandoning the case, but the counsel for the creditors begs him to keep at it for another day to afford him a chance to supply the proof. Next morning the chairman of the creditor's committee appears before the prosecutor, followed by a half dozen porters carrying books of account. He is grinning defiantly. "Say," he says, "I've been reading some of this rubbish you call criminal law myself, and last night I made up my mind that the situation was desperate and I'd have to take a hand in the game myself. So I hired some detectives to break into Johnson's house and steal the books. You get those books in evidence the first thing this morning, and put an end to this farce."

"Do you know that you are guilty of burglary?" asked the prosecutor. "Do you think any grand jury will indict me for it?" rejoins the merchant.

The trial proceeds; the books are offered in evidence. Mr. Jones, counsel for the defendant, objects to their reception. He rages at the violation of Johnson's home. He declaims passionately at the invasion of constitutional rights. To admit the evidence, he asserts, is to countenance the practice of unreasonable search and seizure,—one of the most potent instruments of tyranny; to give the sanction of the law to such procedure is to strike at the cornerstone of liberty, and to convert the court into an accomplice of criminals. The prosecutor quotes a familiar decision of the Supreme Court of the United States. The evidence is admitted; and the jury that has known all along that Johnson was guilty, known it if from nothing else because he hadn't produced his books of account, stays in the jury room long enough to smoke a cigar and tell a few jokes just to give the appearance of decent deliberation in a case that has taken so long to try and brings in a verdict of guilty. The law has been vindicated, but only through an infraction of the law.

The illustration serves to point out some of the most striking absurdities of criminal practice; first, the irrationality of a limitation which denies the prosecutor all process for securing evidence from witnesses who chance to reside or choose to remain beyond the bounds of the state, and renders him powerless when those witnesses are essential to a prosecution; second, the inconsistency of the concept, that while a subject may be required to sacrifice his life for the defense of his country or even in pursuance of a policy of foreign aggression, he may not be compelled to assist in the campaign against the internal enemy, the criminal, by giving testimony in the courts, if thereby he shall expose himself to the slightest risk of prosecution for a criminal offense; third, the paralyzing effect of the illogical extension of the privilege against self-incrimination so as to include within its scope the production of documents; fourth, the farcical and anarchial condition of a system of procedure which, while denying orderly legal process for the extraction of incriminating documents from the possession of an accused or of any other person, yet permits a conviction by means of such documents when secured by fraud or violence.

III

The prosecuting officer is seated in his office. An old friend is striding up and down the room in agony of spirit. He has come for aid. He has just told a pitiful tale. A few days before, his seventeen-year-old daughter had been induced, by some plausible tale of urgent need, to enter a house. She had been lured to an apartment where she had been drugged and defiled. For several days she had been delirious. When she came out of her delirium, she found herself in a hospital where she had been left under a false name by a woman who had given a fictitious name and address. There he had found her after several days of despairing search. As soon as she was strong enough, he had asked her to lead him to the place of her defilement. She had found the place without hesitation; she had pointed out her defiler on the street near the house. The father's first instinct had been to kill. His better judgment had prevailed. He had summoned an officer and demanded the man's arrest. The man had laughed in his face; denied the charge; told him he must be a lunatic. The police officer had refused to arrest, and instructed him that he must get a warrant. He had come to his old friend to ask him as prosecuting officer to move at once. He wanted no favors. He hoped that his daughter would be protected as far as possible against unnecessary humiliation when she was called to testify, and that the full penalty of the law would be imposed.

The prosecutor turns to him and asks questions:—"Was there anyone with your daughter when she was lured into the house? Is there anyone who can corroborate her story?" The answer, in the negative, is given in a tone in which impatience and a sense of outrage struggle for dominance,—"Is his daughter's word to be doubted? Is this suggested need of corroboration an insult; or is it the hyper-caution of the lawyer grown cold to human sufferings and incapable of indignation? Why is there any delay of activity?"

The prosecutor answers: "Without corroboration, I can do nothing. It is not a question of believing your daughter. Neither I, nor the grand jury, nor the petit jury would doubt her word. Of course, such stories are sometimes concocted for blackmailing purposes, but it is the jury's business in all cases to distinguish between stories that are concocted and those that bear the stamp of truth, and they do it. On your daughter's unsupported word I could convict a legion of murder; but for this crime her testimony does not

suffice. It is the law.[2] We are not permitted to act without corroboration. Without it no magistrate would issue a warrant. The grand jury would probably indict if I would let them; but the case would inevitably be dismissed by the trial court, and your little daughter would suffer her public humiliation in vain. I'll do what I can. I'll put a detective agency on the case (in such cases the police are not to be trusted). Perhaps they may find some inmate of the brothel, or some pimp or prostitute whose evidence will suffice. If so, I'll prosecute."

A year has elapsed. The case is on trial. Unremitting efforts by a skilful detective agency had resulted in unearthing one of the confederates in the crime, who had testified before the grand jury upon a promise of immunity. The defiler had been indicted; had been "tipped off" to the indictment, and gone to another city where he had remained in hiding; when the detectives had gotten on his track he had escaped to another place. After months of diligent and relentless search, involving the expenditure of thousands of dollars, he had finally been run to earth in a city at the other end of the continent. There he had been admitted to bail pending extradition proceedings, and while out on bail had tried once more to escape. This time the detectives had anticipated him; he had been held without bail during the extradition proceedings, which he had fought through all the courts. Defeated in the fight he had been brought back to face the trial. During all these months the corroborating witness had been supported and guarded by the prosecutor,—supported, because he had no honest means of earning a livelihood; guarded, because he had been alternately bombarded with threats and solicited with bribes to induce him to retract his story. For once, however, the organized criminals were to be beaten. The prosecutor's testimony was all in; the little girl had stood the ordeal of her examination by the prosecutor, and of an insinuating cross-examination by the oleagenous counsel for the prisoner. The testimony of the corroborating witness had remained unshaken, though his character had been shown to be such as to render it valueless. In fact, the jury had neither heeded it nor desired it. One had but to watch their faces while the girl was testifying to know that they were impatient for the moment which

[2] This is not the law in all jurisdictions, but it is the law in New York and in some other states.

would enable them to render their verdict of guilty, to know that they would gladly have sent the prisoner to the electric chair if that had been within their power. The defendant's case had been concluded and the prosecutor was questioning a witness called in rebuttal upon some minor matter. He had asked a question which the judge had excluded. Thinking that the form and not the substance of the question had been the cause of the ruling, the prosecutor had repeated it in a modified form. Then out of a clear sky came the destructive bolt: "Didn't I tell you not to ask that question?" bellows the judge; "I'll teach you to disobey me; I'll teach you respect for the court; that's what I'll do. The defendant is acquitted. Do you hear, the defendant is acquitted. Gentlemen of the jury, I direct you to acquit the defendant."

In a daze the jury records its verdict. The case is over; and the prisoner walks out of the court room a free man, marveling at the mysteries of the law, or rejoicing in the possession of friends powerful enough to bring about such desirable results.

"But, of course," the layman responds, "this ruling will be upset on appeal, and justice, though delayed, will ultimately be done." Therein lies the purpose of this illustration. The state has no appeal from a judgment of acquittal rendered after any evidence has been submitted to a jury. An illogical interpretation of a constitutional provision forbids that it should have an appeal, and daily in the courts the ends of justice are subject to be defeated through the weakness, ignorance, or wilfulness, as well as through the inevitable mistakes of judges presiding over criminal trials.

Now for the moral. We have erected an office with great potentialities for public service, we have surrounded it with temptations and left it practically unhampered as an agency for oppression and have hedged it about with limitations which prevent it from realizing more than an insignificant measure of its potentialities for good.

That these limitations should be removed would seem to be so obvious as to make it astonishing that they have so long persisted, or that any thinking man would oppose their abolition. Yet doubtless any move to that end will still meet with opposition from sources that command respect. Twenty years ago it would have been almost universally denounced as an attempt to subvert the foundations of

government. The opponents of such reforms insist that the restrictions sought to be abolished are those which the experience of centuries have established to be essential to the preservation of liberty and to the protection of the individual against oppressive use of the prosecutor's powers. The answer is that these provisions, however useful or necessary under conditions in which an accused could be denied the right of counsel, could be bullied and terrorized by a trial judge, forbidden to testify in his own behalf and had no adequate means of securing testimony of others, have under modern conditions, become obsolete and mischievous; that they offer no effective safeguard against the abuse of discretion and the oppressive use of power by the prosecutor, since his power of oppression is confined, in the main, to that which he can do behind the closed doors of the grand jury room, where rights, however perfect, are difficult of enforcement and where reputations can be ruined by the procurement of unwarranted indictments or by the circulation of false rumors as to the evidence offered to the grand jury; that from anything that can be done in the open the innocent have little to fear and need no protection save the opportunity to bring the truth to the light before an impartial tribunal; that these restrictions, by preventing the truth from being brought to light and from prevailing, serve to foster criminality and to encourage the criminal classes; that the removal of the restrictions, by arming the prosecuting officer with the powers essential to the discovery of the truth, will go far toward raising the standard of municipal government, toward inculcating a general spirit of respect for the law and toward rendering less unequal the warfare which society is constantly compelled to wage against its internal enemies.